

AMENDED IN ASSEMBLY JUNE 8, 2006

AMENDED IN SENATE MAY 12, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 535

Introduced by Senator Runner

February 18, 2005

An act to amend Sections 17230, 17464, 47605, 47605.6, 47607, and 47634.2 of the Education Code, relating to charter schools. An act to add and repeal Section 20175.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 535, as amended, Runner. ~~Charter schools.~~ *Design-build contracts: City of Victorville.*

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2011, permits cities in the Counties of Solano and Yolo, with the approval of the appropriate city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions. Existing law requires any city that elects to use the design-build method to make a specified report to the Legislative Analyst's Office before December 1, 2009, and requires the Legislative Analyst's Office to report to the Legislature regarding the use of the design-build method by each city, as provided.

This bill, until January 1, 2011, would permit the City of Victorville, with the approval of the city council, to enter into design-build contracts, as defined, in accordance with specified provisions. This bill would require the City of Victorville, if it elects to use the design-build method, to make a specified report to the Legislative Analyst's Office before December 1, 2009, and would require the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the design-build method. This bill would make a legislative finding and declaration of the necessity to enact special legislation with respect to the City of Victorville.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of the existing crime of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) Existing law permits the governing board of a school district to sell, at less than fair market value, a school site deemed to be surplus property of the district to local entities for use as a park or recreational purposes or open-space purposes, with certain requirements.~~

~~This bill would, in addition, permit such a sale of surplus property to a charter school that is authorized by the school district or that serves pupils who reside in the school district for use as a charter school facility, and would require a charter school that purchases surplus property under these provisions to comply with certain restrictions regarding its use and disposal.~~

~~(2) The Leroy F. Greene State School Building Lease-Purchase Law of 1976 prescribes priorities and procedures for the sale or lease with an option to purchase real property by a school district.~~

~~This bill would, in addition to priorities specified in existing law, require that the property be offered for sale to a charter school that is authorized by the school district or that serves pupils who reside in the school district.~~

~~(3) Existing law prohibits a governing board from denying a petition to establish a charter school, unless it makes findings that the petition lacks specified elements.~~

~~The bill would, in addition, prohibit a governing board from denying a petition unless it makes findings that the petition lacks an assurance of compliance with either open meetings provisions or provisions governing the meetings of public benefit corporations contained in existing law, with certain exceptions.~~

~~The bill would, if a pupil is expelled from the charter school, require the charter school to notify the school district of residence of the pupil and would require a charter school to provide the district of residence of a pupil who is expelled or leaves the charter school without graduating or completing the school year for any reason with a copy of the cumulative file of that pupil, as specified, and with health information, thereby imposing a state-mandated local program.~~

~~(4) Existing law provides for the renewal of a charter and specifies that a renewal shall be for a period of 5 years.~~

~~This bill would, in addition and notwithstanding the above provision of existing law, provide that a charter may be renewed for a period of no less than 5 years and no more than 15 years if the charter school is seeking a loan from a lending institution, with certain requirements.~~

~~(5) Existing law requires teachers in charter schools to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold.~~

~~This bill would provide the intent of the Legislature that charter schools be given flexibility in this respect with regard to nonecore, nonecollege preparatory courses.~~

~~(6) This bill also makes various technical, nonsubstantive changes to existing law.~~

~~(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(8) This bill would incorporate additional changes in Section 47607 of the Education Code, proposed by SB 166, to be operative only if SB 166 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20175.3 is added to the Public Contract
2 Code, to read:
3 20175.3. (a) (1) This section provides an alternative
4 procedure for bidding on building construction projects
5 applicable in the City of Victorville, upon approval of the city
6 council.
7 (2) The city may award the project using either the lowest
8 responsible bidder or by best value.
9 (b) (1) It is the intent of the Legislature to enable cities to
10 utilize cost-effective options for building and modernizing public
11 facilities. The Legislature also recognizes the national trend,
12 including authorization in California, to allow public entities to
13 utilize design-build contracts as a project delivery method. It is
14 not the intent of the Legislature to authorize this procedure for
15 transportation facilities, including, but not limited to, roads and
16 bridges.
17 (2) The Legislature also finds and declares that utilizing a
18 design-build contract requires a clear understanding of the roles
19 and responsibilities of each participant in the design-build
20 process. The Legislature also finds that the cost-effective benefits
21 to cities are achieved by shifting the liability and risk for cost
22 containment and project completion to the design-build entity.
23 (3) It is the intent of the Legislature to provide an alternative
24 and optional procedure for bidding and building construction
25 projects for cities.
26 (4) The design-build approach may be used, but is not limited
27 to use, when it is anticipated that it will reduce project cost,
28 expedite project completion, or provide design features not
29 achievable through the design-bid-build method.
30 (5) If the city council elects to proceed under this section, it
31 shall establish and enforce, for design-build projects, a labor
32 compliance program containing the requirements outlined in
33 Section 1771.5 of the Labor Code, or it shall contract with a
34 third party to operate a labor compliance program containing
35 the requirements outlined in Section 1771.5 of the Labor Code.

1 (c) As used in this section, the following definitions apply:

2 (1) “Best value” means a value determined by objectives
3 relative to price, features, functions, and life-cycle costs.

4 (2) “Design-build” means a procurement process in which
5 both the design and construction of a project are procured from
6 a single entity.

7 (3) “Design-build entity” means a partnership, corporation,
8 or other legal entity that is able to provide appropriately licensed
9 contracting, architectural, and engineering services, as needed,
10 pursuant to a design-build contract.

11 (4) “Project” means the construction of a building and
12 improvements directly related to the construction of a building,
13 but does not include streets and highways, public rail transit, or
14 water resources facilities and infrastructure.

15 (d) Design-build projects shall progress in a four-step
16 process, as follows:

17 (1) (A) The city shall prepare a set of documents setting forth
18 the scope of the project. The documents may include, but are not
19 limited to, the size, type, and desired design character of the
20 buildings and site, performance specifications covering the
21 quality of materials, equipment, and workmanship, preliminary
22 plans or building layouts, or any other information deemed
23 necessary to describe adequately the city’s needs. The
24 performance specifications and any plans shall be prepared by a
25 design professional who is duly licensed and registered in
26 California.

27 (B) Any architect or engineer retained by the city to assist in
28 the development of the project-specific documents shall not be
29 eligible to participate in the preparation of a bid with any
30 design-build entity for that project.

31 (2) (A) Based on the documents prepared in paragraph (1),
32 the city shall prepare a request for proposals that invites
33 interested parties to submit competitive sealed proposals in the
34 manner prescribed by the city. The request for proposals shall
35 include, but is not limited to, the following elements:

36 (i) Identification of the basic scope and needs of the project or
37 contract, the expected cost range, and other information deemed
38 necessary by the city to inform interested parties of the
39 contracting opportunity, to include the methodology that will be

1 *used by the city to evaluate proposals, and specifically if the*
2 *contract will be awarded to the lowest responsible bidder.*

3 *(ii) Significant factors that the city reasonably expects to*
4 *consider in evaluating proposals, including cost or price and all*
5 *nonprice related factors.*

6 *(iii) The relative importance of weight assigned to each of the*
7 *factors identified in the request for proposals.*

8 *(B) With respect to clause (iii) of subparagraph (A), if a*
9 *nonweighted system is used, the city shall specifically disclose*
10 *whether all evaluation factors, other than cost or price, when*
11 *combined are:*

12 *(i) Significantly more important than cost or price.*

13 *(ii) Approximately equal in importance to cost or price.*

14 *(iii) Significantly less important than cost or price.*

15 *(C) If the city chooses to reserve the right to hold discussions*
16 *or negotiations with responsive bidders, it shall so specify in the*
17 *request for proposal and shall publish separately, or incorporate*
18 *into the request for proposal, applicable rules and procedures to*
19 *be observed by the city to ensure that any discussions or*
20 *negotiations are conducted in good faith.*

21 *(3) (A) The city shall establish a procedure to prequalify*
22 *design-build entities using a standard questionnaire developed*
23 *by the city. In preparing the questionnaire, the city shall consult*
24 *with the construction industry, including representatives of the*
25 *building trades and surety industry. This questionnaire shall*
26 *require information including, but not limited to, all of the*
27 *following:*

28 *(i) If the design-build entity is a partnership, limited*
29 *partnership, or other association, a listing of all of the partners,*
30 *general partners, or association members known at the time of*
31 *bid submission who will participate in the design-build contract,*
32 *including, but not limited to, mechanical subcontractors.*

33 *(ii) Evidence that the members of the design-build entity have*
34 *completed, or demonstrated the experience, competency,*
35 *capability, and capacity to complete projects of similar size,*
36 *scope, or complexity, and that proposed key personnel have*
37 *sufficient experience and training to competently manage and*
38 *complete the design and construction of the project, as well as a*
39 *financial statement that assures the city that the design-build*
40 *entity has the capacity to complete the project.*

1 (iii) *The licenses, registration, and credentials required to*
2 *design and construct the project, including information on the*
3 *revocation or suspension of any license, credential, or*
4 *registration.*

5 (iv) *Evidence that establishes that the design-build entity has*
6 *the capacity to obtain all required payment and performance*
7 *bonding, liability insurance, and errors and omissions insurance.*

8 (v) *Any prior serious or willful violation of the California*
9 *Occupational Safety and Health Act of 1973, contained in Part 1*
10 *(commencing with Section 6300) of Division 5 of the Labor Code*
11 *or the federal Occupational Safety and Health Act of 1970*
12 *(Public Law 91-596) settled against any member of the*
13 *design-build entity, and information concerning workers'*
14 *compensation experience history and worker safety program.*

15 (vi) *Information concerning any debarment, disqualification,*
16 *or removal from a federal, state, or local government public*
17 *works project. Any instance when an entity, its owners, officers,*
18 *or managing employees submitted a bid on a public works*
19 *project and were found to be nonresponsive, or were found by an*
20 *awarding body not to be a responsible bidder.*

21 (vii) *Any instance when the entity, its owners, officers, or*
22 *managing employees defaulted on a construction contract.*

23 (viii) *Any violations of the Contractors' State License Law*
24 *(Chapter 9 (commencing with Section 7000) of Division 3 of the*
25 *Business and Professions Code), excluding alleged violations of*
26 *federal or state law including the payment of wages, benefits,*
27 *apprenticeship requirements, or personal income tax*
28 *withholding, or of Federal Insurance Contribution Act (FICA)*
29 *withholding requirements settled against any member of the*
30 *design-build entity.*

31 (ix) *Information concerning the bankruptcy or receivership of*
32 *any member of the design-build entity, including information*
33 *concerning any work completed by a surety.*

34 (x) *Information concerning all settled adverse claims,*
35 *disputes, or lawsuits between the owner of a public works project*
36 *and any member of the design-build entity during the five years*
37 *preceding submission of a bid pursuant to this section, in which*
38 *the claim, settlement, or judgment exceeds fifty thousand dollars*
39 *(\$50,000). Information shall also be provided concerning any*
40 *work completed by a surety during this period.*

1 (xi) *In the case of a partnership or other association that is not*
2 *a legal entity, a copy of the agreement creating the partnership*
3 *or association and specifying that all partners or association*
4 *members agree to be fully liable for the performance under the*
5 *design-build contract.*

6 (B) *The information required pursuant to this subdivision shall*
7 *be verified under oath by the entity and its members in the*
8 *manner in which civil pleadings in civil actions are verified.*
9 *Information that is not a public record pursuant to the California*
10 *Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the*
11 *Government Code) shall not be open to public inspection.*

12 (4) *The city shall establish a procedure for final selection of*
13 *the design-build entity. Selection shall be based on either of the*
14 *following criteria:*

15 (A) *A competitive bidding process resulting in lump-sum bids*
16 *by the prequalified design-build entities. Awards shall be made*
17 *to the lowest responsible bidder.*

18 (B) *The city may use a design-build competition based upon*
19 *best value and other criteria set forth in paragraph (2) of*
20 *subdivision (d). The design-build competition shall include the*
21 *following elements:*

22 (i) *Competitive proposals shall be evaluated by using only the*
23 *criteria and selection procedures specifically identified in the*
24 *request for proposal. However, the following minimum factors*
25 *shall each represent at least 10 percent of the total weight of*
26 *consideration given to all criteria factors: price, technical design*
27 *and construction expertise, life-cycle costs over 15 years or*
28 *more, skilled labor force availability, and acceptable safety*
29 *record. Each of these factors shall be weighted equally.*

30 (ii) *Once the evaluation is complete, the top three responsive*
31 *bidders shall be ranked sequentially from the most advantageous*
32 *to the least.*

33 (iii) *The award of the contract shall be made to the*
34 *responsible bidder whose proposal is determined, in writing, to*
35 *be the most advantageous.*

36 (iv) *Notwithstanding any provision of this code, upon issuance*
37 *of a contract award, the city shall publicly announce its award,*
38 *identifying the contractor to whom the award is made, along with*
39 *a written decision supporting its contract award and stating the*

1 basis of the award. The notice of award shall also include the
2 city's second and third ranked design-build entities.

3 (v) For the purposes of this paragraph, "skilled labor force
4 availability" shall be determined by a demonstrated commitment
5 to training the future construction workforce of California
6 through apprenticeship as required by Section 1777.5 of the
7 Labor Code. The design-build entity shall provide the city with
8 the name, address, and telephone number of the apprenticeship
9 programs, or the names of programs approved by the Chief of
10 the Division of Apprenticeship Standards, from which the
11 design-build entity intends to request the use of apprentices for
12 use on the design-build contract.

13 (vi) For the purposes of this paragraph, a bidder's "safety
14 record" shall be deemed "acceptable" if their experience
15 modification rate for the most recent three-year period is an
16 average of 1.00 or less, and their average Total Recordable
17 Injury/Illness rate and average lost work rate for the most recent
18 three-year period does not exceed the applicable statistical
19 standards for its business category, or if the bidder is a party to
20 an alternative dispute resolution system, as provided for in
21 Section 3201.5 of the Labor Code.

22 (e) (1) Any design-build entity that is selected to design and
23 build a project pursuant to this section shall possess or obtain
24 sufficient bonding to cover the contract amount for nondesign
25 services and errors and omissions insurance coverage sufficient
26 to cover all design and architectural services provided in the
27 contract. This section does not prohibit a general or engineering
28 contractor from being designated the lead entity on a
29 design-build entity for the purposes of purchasing necessary
30 bonding to cover the activities of the design-build entity.

31 (2) Any payment or performance bond written for the purposes
32 of this section shall be written using a bond form developed by
33 the city.

34 (f) All subcontractors that were not listed by the design-build
35 entity in accordance with clause (i) of subparagraph (A) of
36 paragraph (3) of subdivision (d) shall be awarded by the
37 design-build entity in accordance with the design-build process
38 set forth by the city in the design-build package. All
39 subcontractors bidding on contracts pursuant to this section
40 shall be afforded the protections contained in Chapter 4

1 *(commencing with Section 4100) of Part 1. The design-build*
2 *entity shall do both of the following:*

3 *(1) Provide public notice of the availability of work to be*
4 *subcontracted in accordance with the publication requirements*
5 *applicable to the competitive bidding process of the city.*

6 *(2) Provide a fixed date and time on which the subcontracted*
7 *work will be awarded in accordance with the procedure*
8 *established pursuant to this section.*

9 *(g) The minimum performance criteria and design standards*
10 *established pursuant to paragraph (1) of subdivision (d) shall be*
11 *adhered to by the design-build entity. Any deviations from those*
12 *standards may only be allowed by written consent of the city.*

13 *(h) The city may retain the services of a design professional or*
14 *construction project manager, or both, throughout the course of*
15 *the project in order to ensure compliance with this section.*

16 *(i) Contracts awarded pursuant to this section shall be valid*
17 *until the project is completed.*

18 *(j) Nothing in this section is intended to affect, expand, alter,*
19 *or limit any rights or remedies otherwise available at law.*

20 *(k) (1) If the city elects to award a project pursuant to this*
21 *section, retention proceeds withheld by the city from the*
22 *design-build entity shall not exceed 5 percent if a performance*
23 *and payment bond, issued by an admitted surety insurer, is*
24 *required in the solicitation of bids.*

25 *(2) In a contract between the design-build entity and the*
26 *subcontractor, and in a contract between a subcontractor and*
27 *any subcontractor thereunder, the percentage of the retention*
28 *proceeds withheld may not exceed the percentage specified in the*
29 *contract between the city and the design-build entity. If the*
30 *design-build entity provides written notice to any subcontractor*
31 *who is not a member of the design-build entity, prior to or at the*
32 *time the bid is requested, that a bond may be required and the*
33 *subcontractor subsequently is unable or refuses to furnish a bond*
34 *to the design-build entity, then the design-build entity may*
35 *withhold retention proceeds in excess of the percentage specified*
36 *in the contract between the city and the design-build entity from*
37 *any payment made by the design-build entity to the*
38 *subcontractor.*

39 *(l) If the city elects to proceed under this section and uses the*
40 *design-build method on a public works project, the city shall*

1 *submit to the Legislative Analyst's Office before December 1,*
2 *2009, a report containing a description of each public works*
3 *project procured through the design-build process that is*
4 *completed after January 1, 2006, and before November 1, 2009.*
5 *The report shall include, but shall not be limited to, all of the*
6 *following information:*

- 7 *(1) The type of project.*
- 8 *(2) The gross square footage of the project.*
- 9 *(3) The design-build entity that was awarded the project.*
- 10 *(4) The estimated and actual project costs.*
- 11 *(5) A description of any written protests concerning any*
12 *aspect of the solicitation, bid, proposal, or award of the*
13 *design-build project, including the resolution of the protests.*
- 14 *(6) An assessment of the prequalification process and criteria.*
- 15 *(7) An assessment of the effect of retaining 5 percent retention*
16 *on the project.*
- 17 *(8) A description of the Labor Force Compliance Program*
18 *and an assessment of the project impact, where required.*
- 19 *(9) A description of the method used to award the contract. If*
20 *the best value method was used, the report shall describe the*
21 *factors used to evaluate the bid, including the weighting of each*
22 *factor and an assessment of the effectiveness of the methodology.*
- 23 *(10) An assessment of the project impact of "skilled labor*
24 *force availability."*
- 25 *(11) An assessment of the most appropriate uses for the*
26 *design-build approach.*
- 27 *(m) If the city elects not to use the authority granted by this*
28 *section, the city may submit a report to the Legislative Analyst's*
29 *Office explaining why the city elected not to use the design-build*
30 *method.*
- 31 *(n) On or before January 1, 2010, the Legislative Analyst's*
32 *Office shall report to the Legislature on the use of the*
33 *design-build method by the city pursuant to this section,*
34 *including the information listed in subdivision (l). The report*
35 *may include recommendations for modifying or extending this*
36 *section.*
- 37 *(o) This section shall remain in effect only until January 1,*
38 *2011, and of that date is repealed, unless a later enacted statute,*
39 *that is enacted before January 1, 2011, deletes or extends that*
40 *date.*

1 *SEC. 2. The Legislature finds and declares that a special law*
2 *is necessary and that a general law cannot be made applicable*
3 *within the meaning of Section 16 of Article IV of the California*
4 *Constitution because of the unique need to build public facilities*
5 *in a cost-effective manner in the City of Victorville.*

6 *SEC. 3. No reimbursement is required by this act pursuant to*
7 *Section 6 of Article XIII B of the California Constitution because*
8 *the only costs that may be incurred by a local agency or school*
9 *district will be incurred because this act creates a new crime or*
10 *infraction, eliminates a crime or infraction, or changes the*
11 *penalty for a crime or infraction, within the meaning of Section*
12 *17556 of the Government Code, or changes the definition of a*
13 *crime within the meaning of Section 6 of Article XIII B of the*
14 *California Constitution.*

15 ~~SECTION 1. Section 17230 of the Education Code is~~
16 ~~amended to read:~~

17
18
19 **All matter omitted in this version of the bill**
20 **appears in the bill as amended in the**
21 **Senate, May 12, 2005. (JR11)**
22